

Michael E. Piston
Attorney at Law
225 Broadway,
Suite 307
New York, NY, 10007
Ph: 646-845-9895
Fax: 206-770-6350
Email: michaelpiston4@gmail.com

Michael E. Piston*

*Admitted in the State of Michigan.
Practice in the State of New York limited
to the federal courts and administrative
agencies

August 29, 2019

Honorable Carol Bagley Amon
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *AB Discount Depot LLC, et al., v. USCIS*, No. 19-CV-2818 (Amon, J.)

Greetings your honor:

The plaintiffs do not oppose the agency's request for a hearing to discuss the parties anticipated cross-motions for summary judgment, and agrees to the proposed briefing schedule. They look forward to showing the Court that the agency's decision in this matter is not in accordance with law, as well as arbitrary and capricious in that it is largely conclusory in nature and unsupported, in material part, by substantial, or in fact any, evidence.

Plaintiffs agree with the procedural history of this matter as set forth in the government's letter and see no need to repeat it here. Suffice to say that they are seeking review of the USCIS's decision of March 6, 2019 denying (again) AB Discount Depot, Inc.'s petition to classify Ahmed Mansha as a multinational manager under 8 U.S.C. § 1153(b)(1)(C). In that decision the USCIS denied the petition for one and only one reason:

A review of the totality of the record, including the beneficiary's description of his position, the organizational chart, and other documentation regarding the operation of the petitioner and its US subsidiary, does not demonstrate that the beneficiary would primarily be acting in a managerial capacity.

However, in coming to the conclusion that Mr. Mansha would not "primarily be acting in a managerial capacity" the agency only asserted that two (2) of his duties did not (entirely) constitute employment in a managerial capacity:

the beneficiary's discussion of his duties attributes a full 25% of his time to duties related to employee management, such as interviewing and hiring, performance review, and preparation of company manuals for employees, plus an additional 15% "socializing" with employees and customers. However, there appears to be a disproportionate amount of time in employee management relative to the size and complexity of the petitioner and Mansha, Inc. There is also little information about what is involved in "socializing" with employees or customers, or how this would be managerial in nature.

There is no evidence in the record to support the agency's claim that 25% is a disproportionate amount of time in employee management relative to the size and complexity of the petitioner and Mansha, Inc.¹ Further, this finding begs the question of what would be a proportionate amount of time for employee management for these entities. 20%? 15%? Or does the agency seriously mean to suggest that the president of a small company should not spend any of his time at all in employee management?

But even if the agency did mean to hold that AB Discount and its subsidiary could and should operate entirely without senior management, and even if one were to accept at face value the totally unsubstantiated or even explained conclusion that socializing with company employees is not a duty of management², this would still mean that the USCIS only found that at

¹ In fact, the use of the equivocating word "appears" that the agency has doubts about its own conclusions. Had it been certain of them, it would've stated that 25% is a disproportionate amount of time in employee management.

management relative to the size and complexity of the petitioner and Mansha, Inc

² Management experts disagree: "There is perhaps no other part of management that has great as great an influence on reducing burnout as successfully socializing new employees and the values of the organization. Socialization, a critical component of introducing the employee into the organization, is a complex process directed the acquisition of appropriate attitudes, cognitions, emotions, values, motivations, skills, knowledge, and social patterns necessary to cope with the social and professional environment. Socialization differs from and is great a greater impact than either injunction or and orient or orientation and subsequent productivity and retention. It can also help to build loyalty and team spirit. This is the time to instill the employee with pride in the organization and the unit. This type of
Continued on the bottom of the next page.

most 40% of Mr. Mansha's time will be spent performing nonmanagerial duties, which means it has conceded that 60% of his time in the U.S. will in fact be spent employed in a managerial capacity.

"(P)rimarily" means more than half." *Bd. of Governors of Fed. Res. Sys. v. Agnew*, 329 U.S. 441, 450 n.2 (1947). Therefore, inasmuch as the USCIS's decision does not dispute that at least 60% of Mr. Mansha's time in the U.S. will be spent employed in a managerial capacity, it has conceded that he will be primarily employed in a managerial capacity and, accordingly, its decision denying this petition is not in accordance with law. Further it is also arbitrary and capricious in that even its claim that up to 40% of his time may be spent performing nonmanagerial duties is conclusory and/or not supported by substantial evidence. *Butte Cty. v. Hogen*, 613 F.3d 190, 194, 201 (D.C. Cir. 2010).

Accordingly, the plaintiffs will be asking the Court to exercise its authority under the Administrative Procedure Act to hold the agency's decision unlawful and set it aside, 5 U.S.C. § 706(2), and inasmuch as the agency's repeatedly meritless denials have delayed the adjudication of this matter long beyond the time reasonably required to (properly) adjudicate it, to order the agency to issue a new decision in this matter forthwith. 5 U.S.C. § 706(1).

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Michael E. Piston', with a long, sweeping horizontal line extending to the right.

Michael E. Piston
Attorney for the Plaintiffs

Copy to Defendant.

affect affective learning becomes the foundation for subsequent increased satisfaction and motivation".
"Leadership roles and management functions in nursing: theory and application" by Bessie L Marquis
Carol Jorgensen Huston.
<https://books.google.com/books?id=38mzZLwcOe0C&pg=PA391&lpg=PA391&dq=manager+socializing&source=bl&ots=aKII0FePUU&sig=ACfU3U3WhVi7UUVe6QdEB5iLizhINA6LrXA&hl=en&sa=X&ved=2ahUKEw i909D-v87hAhWRwFkKH3SDQU4FBD0ATADegQICRAB#v=onepage&q=manager%20socializing&f=false>

